

What is the ruling on the divorce made by a drunk person?

Shaykh Sulaymān al-'Alwān (حفظه الله) responded by saying: The known divorce is what is upon "Watar", meaning with an intention from the one giving divorce for it to occur, and the one who doesn't know what he's saying, or doesn't have any intent in divorce, his divorce isn't valid and his statement doesn't mean anything, in the Sahīhayn (Bukhārī & Muslim) from the hadith of 'Omar (رضي الله عنه) that the Prophet (صلى الله عليه وسلم) said "Indeed, actions are but by intentions, and for every man is what he intends"

'Uthmān ibn 'Affān (رضي الله عنه) said "There is no divorce from a madman or drunk man" narrated by al-Bukhārī (رحمه الله) in his Sahīh Mu'allāqan (as a hanging narration - Without the complete Isnād mentioned), and ibn Abī Shaybah has the competed chain, and its Isnād is authentic.

Ibn 'Abbās (رضي الله عنهما) said "Divorce from a drunk & coerced man isn't permissible" Bukhārī hanged it بصيغة الجزم (meaning that he's absolutely assuring that ibn 'Abbās said it) and ibn Abī Shaybah & others have gathered the complete Chain.

And ibn 'Abbās (رضي الله عنهما) also said "Divorce is upon Watar" Al-Bukhārī narrated it (Mu'allāqan), with absolute authenticity.

And "al-Watar" with two Fatha's (ط & و) [on the و & ط] is an intent/purpose towards something, and the drunk person doesn't have a "Watar" and this is the Madhab of al-Layth ibn Sa'd (رحمه الله), Ishāq (رحمه الله), Imām Ahmad (رحمه الله) in the last of his Riyāwah's from him, and it was supported by أهل الظاهر (The Dhāhiriyyāh), ibn Taymiyyāh (رحمه الله), ibn al-Qayyīm (رحمه الله) and others.

And it is what the Qur'ān and Sunnāh & the Fatāwah of the Sahābah have indicated/pointed out towards, since being drunk takes away your mind, and therefore he's not aware of what he says, and ibn Hazm (رحمه الله) has mentioned in al-Muhallāh in Ahkām al-Talāq "that 'Omar ibn 'Abdul 'Azīz (رحمه الله) met with a drunk person who divorced his wife who swore by the one who there is no god except Him (Allāh), that I have divorced her, while he didn't have his mind, but he swore by Allāh (جلا وعلا) - So 'Omar ibn 'Abdul 'Azīz (رحمه الله) returned him back to his wife and flogged him with the punishment (of khamr)..."

And Allāh (جلا وعلا) has made his (the man's) statement inconsiderable as He (سبحانه وتعالى) said "O you who believe, do not go near the Salāh while you are drunk until you know what you will say"

And the Prophet (صلى الله عليه وسلم) did not hold Hamzah (رضي الله عنه) responsible for his saying when he was drunk "And are you not except slaves to my father..." Narrated by al-Bukhārī [#4003] & Muslim [#1979] from the chain of 'Alī ibn al-Hussein that Hussein ibn 'Alī informed him from 'Alī (رضي الله عنه).

And from the principles of the Sharee'ah, is to raise the accountability from forgetfulness, mistakes from the tongue, ikrāh (coercion), and the speech that occurs from the tongue without intending it.

Allāh (جلا وعلا) said "Allah does not impose blame upon you for what is unintentional in your oaths, but He imposes blame upon you for what your hearts have earned." and in Sahīh Muslim [#2747] from the hadith of Anas (رضي الله عنه) regarding the story of a man who lost his mount in a deserted land, and it had his food and drinks, so he was in despair from that, so when he saw it standing next to him, he said "O Allāh you are my slave and I am your Lord" he made a mistake from his immense joy. It's also narrated by al-Bukhārī [#6309] and Muslim [#2747] from another chain without its ending.

And in this issue is a second saying, which necessitates the occurrence of divorce from a drunk man and that is what's narrated from Mu'āwiyāh(رحمه الله), Sa'eed ibn al-Musayyib(رحمه الله), al-Zuhrī(رحمه الله), al-Shāfi'ee(رحمه الله) in one of his 2 opinions, Mālik(رحمه الله) and others. And they have proofs for that...

The strongest[of their proof] being is that he is held responsible for crimes, so likewise with divorce, but this isn't correct because the statements/sayings differ from the actions. So if it's said, the divorce of a drunk person isn't valid, it doesn't mean we drop the Qisās(retaliation punishment) from him, because pardoning from giving Qisās & Hudūd(punishments) is a means to spread corruption, and a call for abandoning the hudūd(punishments) and the Ahkām(rulings), unlike the divorce, he doesn't hold responsibility for anything from that(since he isn't aware of speech, unlike actions).

And from this, the Major Sahābah differentiated between the 2 matters, so they enforced the Hudūd(punishments) & Qisās(retaliation) without [taking into account] the Divorce والله اعلم